

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5336 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTILAL M PATEL

Versus

STATE OF GUJARAT

Appearance:

MS KHYATI P HATHI for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/98

ORAL JUDGMENT

The learned counsel for the petitioner admitted that during the pendency of this Special Civil Application, in the year 1988, the petitioner has been given promotion by respondents in class II post in the Gujarat Cooperation services. It has further been stated that the petitioner, due to his ill health, has sought voluntary retirement which has been accepted and he has

been retired in the year 1989.

2. In the Special Civil Application, twofold prayers have been made by petitioner. First, for quashing and setting aside the order of the respondents, if passed, calling upon the petitioner to join the Panchayat Services and to get himself relieved from the post of Auditor Grade I. So far as this prayer is concerned, this Court has protected the petitioner and that order has been given effect to and accepted by respondents, which is clearly borne out from the fact that the petitioner has been given promotion during the pendency of this Special Civil Application to class II post in the Gujarat Cooperation Services. So this grievance now no more survive and further in view of the retirement of the petitioner on his own volition, nothing now has to be decided in this respect. So far as the second prayer is concerned, the petitioner has prayed that the respondents may be directed to give him deemed date of promotion in the class II post in Gujarat Cooperation Services, i.e. the date from which his junior Mr.H.D.Barot has been promoted in class II post. The learned counsel for the petitioner submitted that Mr.Barot was promoted on 29th August 1984. His case for promotion in the year 1984 was not considered, as per the case of the petitioner, on the ground that the petitioner had once opted for being posted in class II post in Gujarat Development Services. The learned counsel for the petitioner, relying on the decision of the Hon'ble Supreme Court, in the case of Smt.Naseem Bano v. State of U.P. & Ors. reported in AIR 1993 SC 2592, submitted that the averments made by petitioner in the Special Civil Application should be accepted as the respondents have not controverted the same. In this case, reply to the Special Civil Application has not been filed by respondents and as such the averments made by petitioner in the Special Civil Application stand uncontroverted.

3. So the case of the petitioner, in the year 1984, was not considered for promotion in class II post in the Gujarat Cooperation Department services. However, he has been given promotion in later point of time in the year 1988. In the facts and circumstances of the case, interest of justice will be served in case this Special Civil Application is disposed of in terms that the respondent No.1 may consider the case of petitioner for promotion in class II post in the Gujarat Cooperation Department, with reference to the date on which his immediate junior has been promoted and in case he is found suitable for promotion, he may be given all consequential benefits in accordance with law. This

exercise has to be undertaken by respondent No.1 within a period of three months from the date of receipt of writ of this order. In case the petitioner is found suitable for promotion from 29th August 1984, then all the consequential benefits for which he is legally entitled be given to him within a period of two months next. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)